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GOVERNOR



LEONARD K. PETERS  
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COMMONWEALTH OF KENTUCKY  
**ENERGY AND ENVIRONMENT CABINET**

MINE SAFETY REVIEW COMMISSION  
132 BRIGHTON PARK BLVD.  
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COMMISSIONERS  
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CHAIR  
WILLIAM D. DONAN  
JOE CHILDERS

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GENERAL COUNSEL

**MINE SAFETY REVIEW COMMISSION  
MINUTES**

MINUTES OF THE REGULAR MEETING OF **AUGUST 14, 2008**: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSRC" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Denise Moore Davidson, Commissioner William D. Donan and Commissioner Joe F. Childers were present. Also in attendance MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 a.m. EST
- ❑ **Declaration of a Quorum:** Upon the call of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Hon. Mike Haines, Energy and Environment Cabinet General Counsel was present and also staff attorneys for OGC; Lentz, Thompson, Morrison, Geisler, Boyd and Smock who were representing the Office of Mine Safety and Licensing. The Office of General Counsel was assisted by Kari Sutherland, Mary McCoy, Tara New.
- ❑ The **minutes** for the meeting on **07/10/08** were discussed. Commissioner Donan made a motion for approval, which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered. Chair Davidson signed the minutes.

- ❑ **OMSL Motions for Sanctions & Permanent Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**
  - 06-MSRC-056 Christopher Brown, 06-MSRC-125 Roy Lynn Hunt, 07-MSRC-064 Troy A. Collett, 07-MSRC-107 Christopher S. Dunn, 07-MSRC-111 Larry N. Tooley, 07-MSRC-139 Richard L. Caudill Jr., and 08-MSRC-168 Justin Caudill were each called in turn. None of these respondents appeared or participated and no one on their behalf filed any response. OMSL moved for **permanent revocation** as to each based upon noncompliance with the drug testing or evaluation terms of the Settlement Agreement incorporated as the Final Order of this Commission. This was found to be a violation of the Final Order for each. Commissioner Donan made a motion to **grant** the motions which were seconded by Commissioner Childers. The motions carried unanimously, and were so Ordered upon the signature of Davidson.
  - 08-MSRC-149 Brandon L. Fannin appeared and requested a **settlement** which was incorporated in an amended settlement agreement and submitted for MSRC approval. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
  - 06-MSRC-042 Ralph Hurley was called and OMSL moved for a **continuance** to September 11. Mr. Hurley is represented by the Hon. Roper who was unable to attend. Commissioner Donan made a motion to **grant** the motion which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- ❑ **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**
  - The Commission discussed the procedurally similar KRS 351.120(12) appeals of: 07-MSRC-243 Jared Stanley represented by Hon. Clark, and 08-MSRC-172 Timothy J. Brewer, an Initial Denial type case. They either appeared or contacted counsel prior to the hearing and moved for **continuances** to September 11. Commissioner Donan so moved as to each. These were seconded by Commissioner Childers. The motions carried unanimously, and were so Ordered. Commissioner Davidson signed the Orders.
  - The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 07-MSRC-090 Jeffrey Slone represented by Hon Parker,

08-MSRC-173 Michael V. French an Initial Denial type case, 08-MSRC-174 Solomon Madden, 08-MSRC-175 Joshua W. Johnson, 08-MSRC-178 Vance Caleb Ray, 08-MSRC-179 David D. Blair, 08-MSRC-180 Brandon H. Beach and 08-MSRC-191 Brian K. Mullins in turn. Every one of these Petitioners appeared and tendered a **Settlement Agreement** and Motion to Approve the same. Commissioner Davidson recused from the determinations on Madden and Commissioner Childers recused from the determinations on Blair and Mullins both citing a conflict. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- The Commission called 08-MSRC-136 Jason Barger and he appeared and participated. Mr. Barger opined that a “family emergency” should excuse his several past omissions from complying with the pre-hearing and Show Cause Orders of the Commission. The Commission then determined that he would be issued an Order that day regarding the disciplinary measures and dictated the terms of his drug testing regimen, suspension and probation incorporated in the **Final Order**. Commissioner Childers moved for approval, and Davidson seconded and the motion passed unanimously. Chair Davidson signed the Order.
- The Commission called also the KRS 351.120(12) Petition for Appeal of 08-MSRC-176 Matthew Wolford and 08-MSRC-177 Jeremy J. Engle who were duly notified and scheduled for the hearing *they* requested for this meeting. **Neither** of them **appeared** and were each Ordered to **Show Cause** as to why their certificates should not be revoked upon order at the next meeting. Commissioner Donan made the motion for Show Cause which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Orders.
- The Commission also considered 08-MSRC-162 Buford McIntosh and 08-MSRC-171 Coleman Holland who failed to appear despite notice at the last meeting and also failed to appear, answer or participate in the Show Cause set for this meeting. Commissioner Donan made the motion to **revoke** which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

**The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” revocations:**

- The Commission called and then granted the motions by OMSL for **revocation** in the following procedurally similar cases. No one appeared on behalf of any Respondent miner and no Respondent appeared despite notice by certified mail with a return as to each; 08-MSRC-134 Adam K. Rose, 08-MSRC-182 Greg Cooper, 08-MSRC-183 Daniel Wagers, 08-MSRC-184 Christopher Shackelford, 08-MSRC-188 Jimmy Charles and 08-MSRC-190 Derick Steven Hogg. Commissioner Donan made a motion to **grant**, each of the OMSL Motion for Revocations which were seconded by Commissioner Childers. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission also ruled favorably on the proposed **settlement** tendered in the following OMSL Show Cause hearing for revocation: 08-MSRC-181 Lee Sartin, 08-MSRC-187 Matthew Yeary and 08-MSRC-189 Jayson Dwayne Collins. Commissioner Donan made a motion to **grant**, the OMSL Motions for settlement which were seconded by Commissioner Childers. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- OMSL also moved to **continue** 08-MSRC-185 Durand Warren and 08-MSRC-186 Shannon Cromer to September 11, 2008 for further investigation and service of process. Commissioner Donan made a motion to **grant**, the OMSL Motion for continuance which was seconded by Commissioner Childers. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission called 08-MSRC-163 Jeremy K. Raschella and whereas he failed to appear at the last meeting and his hearing continued to this meeting OMSL moved to **Show Cause** as to why his certifications should not be revoked at the September meeting. Commissioner Donan made a motion to **grant**, OMSL's motion which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

**The 11:00 a.m. Docket for Motions to Reconsider:**

- The Commission took up the matter of reconsideration for 08-MSRC-129 John Acord. He stated that he was unable to appeal his previous suspension or participate in the hearings because the suspension and other Show Cause information regarding the hearing were while he was incarcerated. OMSL prepared and presented a **settlement** agreement Commissioner Donan made a motion to **grant**, the OMSL Motion for

settlement which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

- The Commission then called 07-MSRC-174 Willis Lewis, Jr. Mr. Lewis requested reconsideration, which was granted and docketed for this meeting with notice of the hearing sent to the address he provided. Mr. Lewis failed to appear, participate or make any filing and no one appeared on his behalf, thus the Commission determined that he failed to meet his burden of proof and the previous Order remains in full force and effect. Commissioner Donan made a motion to **deny**, the Motion for Reconsideration which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

**The 11:00 a.m. Docket for “traditional” type cases:**

- The Commission called 07-MSRC-126 CAM Mining, LLC & Roy Cleatis Rowland in regard to a settlement and OMSL made a motion to enter a **settlement** agreement at this meeting. Counsel for Cam, Hon. Mark Heath also moved for settlement. Commissioner Donan made a motion to **grant**, the OMSL Motion which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.
- Upon the call of 08-MSRC-077 Phillip D. Ray, OMSL Counsel Hon. Boyd informed the Commission that Respondent in the case and OMSL had reached a **settlement** agreement. After consideration MSRC determined that this motion should be **granted**. Commissioner Donan so moved, Childers gave the second and Davidson signed the Order.
- The Commission called 08-MSRC-111 **Wolford, Adkins & Chapman**. Attorney Boyd made a motion to approve the settlement of Adkins, who appeared and tendered the agreement. Mr. Chapman did not attend, nor did he participate by phone or by counsel, and thus the Commission determined that a Show Cause Order was appropriate. Donan made a motion to **grant**, as to each and they were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission called 07-MSRC-125 Big Elk Mining Co. Inc., 07-MSRC-143 William Henry Harris and 07-MSRC-167 Blue Diamond Coal Co. Attorney Haines made a motion to **continue** the consideration of these **settlement agreements** to the September meeting. Commissioner Donan made a motion to **grant**, as to each and they were seconded by Commissioner Childers. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- The Commission called 08-MSRC-122 Fuller, Tackett & Tackett. Mr. Fuller appeared pro se and admitted the fact of the violation and stated that neither Tackett were aware of his hidden smoking materials. OMSL offered Mr. Fuller a **settlement agreement** and its terms were **approved** by the Commission with a motion, second and unanimous vote. Next the Hon. Bobby Williams appeared on behalf of both Tackett Respondents and moved for **dismissal** based upon the previous admission. The Commission took the matter under consideration and informed Hon. Williams that an Order would be forthcoming within 90 days.
- **Petitions for an Order filed by OMSL in roof control cases:**

*None were filed for this meeting.*

## **Old Business**

**Ratification of Final Order:** *None were filed for this meeting.*

### **□ Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday September 11, and the possibility of one traditional type hearing: 08-MSRC-199 Dennison.

### **□ Status Report & Abeyances;**

*None were filed for this meeting.*

### **□ Appeals**

- The Commission discussed the appeal to Franklin Circuit Court of the Final Order in **Hobert Hoskins** 05-MSRC-007 now 05-CI-01702 in Division I. The Commission was informed that Judge Sheppard Ordered a **briefing schedule**. Counsel for OMSL is to file a Motion to Dismiss for the reason that the case is moot due to the passage of time exceeding the probationary period ordered with no further violations.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Willie “Tick” Sizemore**, et al. and learned that it had been appealed to the **Court of Appeals**.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed that Hon. Barbara Pauley is filing a **briefing schedule**.

- The Commission discussed the status of the appeal to Franklin Circuit Court of 06-MSRC-005 **McCoy & Short**, 07-CI-1981, Division 1. The matter was **briefed** by Hon. Larry Moscoe.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 07-MSRC-088 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated that they were **briefing** the matter.

## **New Business**

### **□ Office & Administrative;**

- The General Counsel advised that the **mileage** remains to forty nine (49) cents per mile.
- The required deep and surface mine visits are being scheduled and facilitated by Commissioner Donan for the full Commission.

### **□ Training**

- **Required Hearing Officer Training:** Newly appointed Commissioner Joe F Childers is scheduling his required 40 hour new miner training and the required training for compliance with the KRS 13B hearing officer statutory requirements.
- **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the Probable Cause Determinations and then reconvened to issue orders below as appropriate.

### **□ Probable Cause Determinations**

The following case was discussed and then the Commission determined that Probable Cause was appropriate in the amendment of 08-MSRC-199 David W. Dennison. Commissioner Donan so moved, Childers gave the second and Davidson signed the Order.

### **□ Settlement Agreements**

The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- ❑ **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- ❑ **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday September 11** 2008.
- ❑ **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Childers. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday September 11, 2008. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Chair Denise Moore Davidson  
Mine Safety Review Commission

9/11/08  
Date